## IN THE UNITED STATES DISTRICT COURT

## FOR THE EASTERN DISTRICT OF TEXAS

## BEAUMONT DIVISION

OLEGARIO PUGA-OLMOS §

VS. § CIVIL ACTION NO. 1:08-CV-362

UNITED STATES OF AMERICA, ET AL. §

## MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Olegario Puga-Olmos, a federal prisoner confined in Beaumont, Texas, proceeding pro se and in forma pauperis, filed this civil action pursuant to Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), against the United States of America and the Bureau of Prisons.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the

objections are without merit. The government and its agencies are not subject to claims for damages

under Bivens.

In an amended complaint, plaintiff asserts a cause of action under the Federal Tort Claims

Act (FTCA). The FTCA provides a limited waiver of sovereign immunity. The statute allows the

United States to be held liable to the same extent as a private employer for certain common law torts

of government employees acting within the scope of their employment. 28 U.S.C. § 1346(b). A

claim is not actionable in federal court unless the claimant has exhausted administrative remedies

with the appropriate government agency. 28 U.S.C. § 2675(a). The FTCA bars claimant from filing

suit in federal court until they have exhausted administrative remedies. McNeil v. United States, 508

U.S. 106, 113 (1993).

Documents submitted by plaintiff reflect that this lawsuit was filed while the administrative

proceedings were pending. Although the administrative proceedings were completed after the

lawsuit was filed, this court may not consider a prematurely filed FTCA action, even where no

substantial progress has been made in the litigation. *Id.* at 110. Therefore, the FTCA claim must

be dismissed.

**ORDER** 

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions

of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A

final judgment will be entered in this case in accordance with this memorandum order.

SIGNED this the 27 day of February, 2009.

Thad Heartfield

United States District Judge